

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
To Revise Its Electric Marginal Costs, Revenue
Allocation, and Rate Design.

U 39 M

Application 04-06-024
(Filed June 17, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON TURN, NRDC AND AECA
NOTICES OF INTENT TO CLAIM COMPENSATION**

On September 20, 2004, Notices of Intent to Claim Compensation (NOIs) were filed and served by three groups: The Utility Reform Network (TURN), the Natural Resources Defense Council (NRDC), and the Agricultural Energy Consumers Association (AECA). No responses have been received.

This ruling finds TURN and NRDC eligible to claim compensation. AECA must still meet the significant financial hardship test before it can be found eligible.

1. Background

The Commission's "Intervenor Compensation Program Guide" dated January 2004 identifies the items that must be included in, and provides a template for, an NOI.¹ The necessary items are:

¹ For NOIs, see pages 3-7 and 14-16 of the Program Guide, which may be accessed via the following link: <http://www.cpuc.ca.gov/PUBLISHED/REPORT/33691.htm>.

- a. Summary information,
- b. Statement of timely filing,
- c. Statement of customer status,
- d. Explanation of significant financial hardship,²
- e. Description of the nature and extent of planned participation,
- f. Itemized estimate of costs of participation, and
- g. Conclusion.

2. Discussion

Each group states that it has been recognized as a customer in one or more Commission proceedings. Moreover, TURN and AECA note that they have each been awarded intervenor compensation in prior Commission orders. No facts are presented here, or otherwise known, that would suggest a different conclusion regarding the eligibility of each group for purposes of intervenor compensation.

Moreover, each group presents the required information, even if not in the template format.³ The information is discussed and assessed for TURN, NRDC and AECA in Attachments A, B and C, respectively. No ruling is required for AECA at this time since AECA did not present its showing on significant financial hardship. (§ 1804(b)(1).) Nonetheless, the information provided by AECA is addressed in Attachment C, and preliminary conclusions are reached.

Thus, after consultation with the Assigned Commissioner, this ruling is the “preliminary ruling addressing whether the customer will be eligible for an

² Alternatively, this showing may be deferred to the request for an award of compensation.

³ Each group should consider using the template for future NOIs.

award of compensation.” (Pub. Util. Code § 1804(b)(1).)⁴ TURN and NRDC are each found eligible. AECA is not yet found eligible.

IT IS RULED that:

1. The Utility Reform Network (TURN) and Natural Resources Defense Council (NRDC) each:

- a. is a customer for purposes of intervenor compensation (Category 3),
- b. presented a satisfactory (i) statement of the nature and extent of its planned participation (although each should in the future consider referring to issues identified in the Scoping Memo), and (ii) itemization of an estimate of compensation it expects to request, and
- c. has established by unrebutted presumption that its participation without an award of intervenor compensation would pose a significant financial hardship.

2. The Agricultural Energy Consumers Association (AECA):

- a. is a customer for purposes of intervenor compensation (Category 2),
- b. is a customer for this purpose only for individual customer members of AECA (not entities it may represent other than individual customer members),
- c. presented a satisfactory (i) statement of the nature and extent of its planned participation (although it should in the future consider referring to issues identified in the Scoping Memo), and (ii) itemization of an estimate of compensation it expects to

⁴ All code references are to the Public Utilities Code unless otherwise noted.

request (although AECA may have an unrealistic expectation of compensation),

- d. has not established that its participation without an award of intervenor compensation would pose a significant financial hardship, and
- e. shall in any subsequent request for compensation (i) address whether it represents customer interests that would otherwise be underrepresented, (ii) address the extent to which it avoided unproductive or unnecessary participation, and (iii) include data to enable the Commission to affirm, update, adjust or otherwise address the 61.6% compensation factor adopted for AECA in previous compensation awards.

3. The reasonableness of the hourly rates for personnel services stated in each Notice of Intent to Claim Compensation shall be addressed in the later request for compensation, if any, by TURN, NRDC and AECA.

4. TURN and NRDC are each eligible for an award of intervenor compensation. The exact amount of the award, if any, shall be determined based on the reasonableness of their request for award, and this ruling “in no way ensures compensation.” (§ 1804(b)(2).) The Commission may audit the records and books of TURN, NRDC and/or AECA (if AECA is later found eligible and given an award) to the extent necessary to verify the basis of the award.

(§ 1804(d).)

Dated October 21, 2004, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

ATTACHMENT A

NOTICE OF INTENT (NOI) OF THE UTILITY REFORM NETWORK (TURN)

A.1. Timely Filing

A prehearing conference (PHC) was held on August 20, 2004. The Utility Reform Network (TURN) filed its Notice of Intent to Claim Compensation (NOI) on September 20, 2004, within 30 days of the PHC. (§ 1804(a)(1).) The filing is timely.

A.2. Customer Status

The Public Utilities Code defines customer in three ways, which the Commission categorizes as:

Category 1: a participant representing consumers.

Category 2: a representative authorized by a customer.

Category 3: a representative of a group or organization that is authorized by its articles or bylaws to represent the interests of residential customers.

(§ 1802(b); Decision (D.) 98-04-059, 79 CPUC2d 628.)

TURN asserts that it meets the definition of a Category 3 customer. In support, TURN states that it is a nonprofit consumer advocacy organization with a long history of representing the interests of residential and small commercial customers of California's utility companies before the Commission. TURN's articles of incorporation specifically authorize it to represent the interests of residential customers. Copies of the relevant portion of TURN's articles of incorporation are attached to an NOI submitted in A.98-02-017 and again in A.99-12-024. The articles of incorporation have not changed since the earlier submissions. TURN has approximately 30,000 dues-paying members, of whom

TURN believes the great majority are residential ratepayers. Because TURN does not poll its members in a manner that would allow a precise breakdown between residential and small business members, the exact percentage is not available. TURN's members include many customers of Pacific Gas and Electric Company (PG&E or applicant).

TURN is a Category 3 customer.

A.3. Adequacy of Representation

TURN asserts that Aglet and TURN are the only intervenors exclusively representing the interests of residential customers, who by number represent the vast majority of applicant's customers.¹ TURN states that the Commission's Office of Ratepayer Advocates (ORA) will represent the interests of all classes of customer, but that only "TURN and Aglet are the sole representatives of the residential class." (TURN NOI at page 2.)

The Commission has found that participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission ensure that the record is fully developed and that each customer group receives adequate representation. (See, for example, Ruling issued July 7, 1999, page 3, in A.98-09-003, et al.) Based on its long history of successful participation before the Commission, it is reasonable to conclude that TURN has knowledge and experience that may support and complement the work of ORA or others.

¹ Aglet is not an appearance in this proceeding at this time.

A.4. Nature and Extent of Planned Participation

The NOI must include a statement of the nature and extent of the customer's planned participation as far as it is possible to set out when the NOI is filed. (§ 1804(a)(2)(A)(i).) TURN states that it anticipates being very active in this proceeding, and plans to submit testimony, participate in evidentiary hearings, file briefs, and submit comments on proposed decisions. TURN does not identify the issues it intends to address,² but says that the extent of its involvement will depend upon the resources available to it at the time such involvement is required.

The intent of the Legislature is that the Commission administers the program in a manner to encourage effective and efficient participation, but avoid unproductive or unnecessary participation. (§§ 1801.3(b) and (f).) TURN points out that it will tailor its participation to ensure that its work serves to support and complement the work of other parties that share its positions, and avoid any undue duplication where possible.

TURN meets the requirement that it state the nature and extent of its planned participation as far as it is possible to set out when the NOI is filed. It also makes a reasonable assertion that it will minimize unproductive or unnecessary participation. In future NOIs, however, TURN should—as should each intervenor—identify the issues it intends to address in order to “help all

² The Commission requests that each intervenor in this section of its NOI “list the issues you intend to address in this proceeding, and briefly explain how you will address them.” (“Intervenor Compensation Program Guide” prepared by the California Public Utilities Commission, January 2004, pages 6-7.)

parties to see whether others are planning to address the same issues.”

(Intervenor Compensation Program Guide, pages 6-7.)³

A.5. Itemized Estimate of Compensation

The NOI must include an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time the NOI is filed. (§ 1804(a)(2)(A)(ii).) TURN states that it expects an itemized projected budget as follows:

Person or Item	Hours	Hourly Rate	Cost
Staff Attorney Matthew Freedman	200	\$270	\$54,000
Senior Attorney Michel P. Florio	50	465	23,250
Executive Director Bob Finkelstein	25	395	9,875
Expert Witness Bill Marcus	150	195	29,250
Expenses			1,500
TOTAL			\$117,875

TURN states that any future request is dependent upon the Commission’s final determination, and the reasonableness of the hourly rates will be addressed in TURN’s request for compensation, if eventually filed.

TURN has satisfied the requirement that it include an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appeared at the time the NOI was filed.

³ For example, 32 issues are identified in the August 27, 2004 Scoping Memo and Ruling. When the Scoping Memo predates the filing of the NOI, the customer should identify the issues in the Scoping Memo that it intends to address, or in some other manner identify as specifically as possible the issues it intends to address.

A.6. Significant Financial Hardship

A finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding. (§ 1804(b)(1).) TURN obtained a finding of significant financial hardship on July 27, 2004, by ruling in Rulemaking 04-04-003. This proceeding commenced on June 17, 2004, or within one year of the most recent relevant ruling.

TURN has demonstrated significant financial hardship by rebuttable presumption.

(END OF ATTACHMENT A)

ATTACHMENT B

NOTICE OF INTENT (NOI) OF NATURAL RESOURCES DEFENSE COUNCIL (NRDC)

B.1. Timely Filing

Natural Resources Defense Council (NRDC) filed its NOI on September 20, 2004, which is within 30 days of the PHC. (§ 1804(a)(1).) The filing is timely.

B.2. Customer Status

NRDC claims that it is a Category 3 customer since it is a “representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.” (§ 1802(b).) In support, NRDC states that it is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy requires. NRDC reports that it has participated in many Commission proceedings over the last two decades with particular interest in energy efficiency programs, renewable energy resources and other sustainable energy alternatives. NRDC says that it is a formally organized group authorized pursuant to its bylaws to represent the interests of its members, nearly all of whom are residential customers. Its Bylaws specifically authorize it to represent members’ interests in regulatory and judicial proceedings, with a copy of the relevant items attached to its NOI (e.g., Bylaw § 1.02(a); Certificate of Incorporation at Part Two). NRDC further states that over 110,000 of its members live and purchase utility services in California, and it is certain that at least 40,000 of these members are residential customers of one of the three major California investor owned utilities.

NRDC is a Category 3 customer.

B.3. Adequacy of Representation

NRDC states that its members highly prioritize the need to preserve environmental quality while minimizing the societal costs of providing electric service through energy efficiency, renewable resources and other cost-effective alternative energy resources. NRDC further states that it represents customers with a concern for the environment that distinguishes their interests from the interests represented by other consumer advocates.

As noted above, the Commission has found that participation in Commission proceedings by parties representing the full range of affected interests is important. Moreover, customers with a specific concern for the environment have the potential to reasonably distinguish this interest from the interests represented by other groups. It is reasonable to conclude that NRDC has knowledge and experience that may support and complement the work of others.

B.4. Nature and Extent of Planned Participation

NRDC states that it will be an active participant, and has an extended history of working to minimize the societal costs of reliable energy services. NRDC says it will participate actively in all phases of this proceeding including hearings, plus submission of briefs and comments. NRDC further says it will coordinate its participation with other parties to avoid duplication.

NRDC meets the requirement that it state the nature and extent of its planned participation as far as it is possible to set out when the NOI is filed. It makes a reasonable assertion that it will minimize unproductive or unnecessary participation. In future NOIs, NRDC should—as should each intervenor—identify as specifically as it can the issues it intends to address in order to “help all parties to see whether others are planning to address the same issues.”

(Intervenor Compensation Program Guide, pages 6-7.) This might include, for example, citing the subset of issues identified in the Scoping Memo which it intends to address.

B.5. Itemized Estimate of Compensation

NRDC states that it expects an itemized projected budget as follows:

Person or Item	Hours	Hourly Rate	Cost
Scientist Devra Bachrach	75	\$100	\$7,500
Scientist Sheryl Carter	50	150	7,500
Expenses			1,500
TOTAL			\$16,500

NRDC notes that the amount of any future claim is dependent upon the Commission's final decision, and the reasonableness of the hourly rates will be addressed in NRDC's request for compensation, if any.

NRDC has satisfied the requirement that it include an itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appeared at the time the NOI was filed.

B.6. Significant Financial Hardship

NRDC obtained a finding of significant financial hardship on July 27, 2004, by ruling in Rulemaking 04-04-003. This proceeding commenced on June 17, 2004, or within one year of the most recent relevant ruling. NRDC has demonstrated significant financial hardship by rebuttable presumption. (§ 1804(b)(1).)

(END OF ATTACHMENT B)

ATTACHMENT C

NOTICE OF INTENT (NOI) OF AGRICULTURAL ENERGY CONSUMERS ASSOCIATION (AECA)

C.1. Timely Filing

Agricultural Energy Consumers Association (AECA) filed its NOI on September 20, 2004, which is within 30 days of the PHC. (§ 1804(a)(1).) The filing is timely.

C.2. Customer Status

AECA does not state whether it claims in this proceeding to be a customer in Category 1, 2 or 3. It does state, however, that it is an incorporated nonprofit association registered with the State of California authorized by its articles of incorporation and bylaws to represent and advocate the interests of agricultural customers of electrical and gas utilities in California. Further, it states that it “has been found eligible as a Category 2 customer on numerous occasions before this commission...and has been awarded compensation on at least four separate occasions...” (AECA NOI, page 2.)

The majority of AECA’s members are direct customers of PG&E. Its members include individual producers, processors, produce cooling operations, agricultural water agencies and member agricultural associations. These members authorize AECA via the organization’s bylaws to represent them, including before the Commission.¹ As a result, this ruling finds that AECA is a

¹ AECA’s specific purpose “is to improve agricultural conditions by...participation and intervention in governmental proceedings affecting agricultural use of energy and the cost of energy to agriculture in the State of California.” (AECA Bylaws, Article III, Section 1.)

Category 2 customer for purposes of this proceeding. That is, AECA “is a representative who has been authorized by actual customers to represent them.” (Intervenor Compensation Program Guide, page 4.) If AECA seeks its eligibility on the basis of either Category 1 or 3, AECA must file a supplemental NOI to show why and how it qualifies for another category.

Further, AECA states that it “is not seeking eligibility...for its water district customers.” (AECA NOI, page 6.) Accordingly, eligibility is not found for such customers, and AECA is neither a Category 1, 2 nor 3 customer for water district customers. Any subsequent request for compensation by AECA should identify the percentage of its membership that is water district customers, and exclude its costs of representing those customers.

Finally, AECA states: “AECA remains primarily a group of individual customers and only seeks eligibility for its individual customer members...” (AECA NOI, page 6, emphasis in original.) Accordingly, eligibility as a Category 2 customer is found only for AECA’s individual customer members. Any subsequent request for compensation by AECA should only include costs for representing individual customer members, and exclude all costs for representing customers other than individual customer members. As part of this showing, AECA must clearly state the percent of its membership that is individual members so the Commission may consider affirming, updating or adjusting the previously adopted compensation factor of 61.6%. Failure to make a convincing showing on the appropriate percentage may result in delay or denial of a future compensation award.

C.3. Adequacy of Representation

AECA states that it will represent and advocate the interests of agricultural customers. As noted above, the Commission has found that participation in

Commission proceedings by parties representing the full range of affected interests is important. Moreover, customers with a specific concern (e.g., agricultural interests) have the potential to reasonably distinguish this interest from the interests represented by other groups. Further, it is reasonable to conclude that AECA has knowledge and experience that may support and complement the work of others.

AECA states that as part of a later significant financial hardship showing it “will also address issues related to whether it represents customer interests that would otherwise be underrepresented in this proceeding and include data that will enable the Commission to affirm, update or otherwise address the 61.6% compensation factor adopted for AECA in previous compensation awards.” (AECA NOI, page 3.) AECA should do so in order to fully support its request for compensation. Failure to do so could result in a delay or denial of a future award.

C.4. Nature and Extent of Planned Participation

AECA does not specifically and separately identify the nature and extent to its planned participation. In stating its total estimated budget, however, AECA says: “In preparing testimony, general participation, appearances at hearings and cross-examination, and briefing, AECA estimates...” (AECA NOI, page 3.)

This statement is not unlike that of TURN and NRDC. As with TURN and NRDC, AECA meets the requirement that it state the nature and extent of its planned participation as far as it is possible to set out when the NOI is filed.

AECA does not, however, make a reasonable assertion that it will minimize unproductive or unnecessary participation. Future compensation, if

any, may be influenced by the extent to which AECA avoids unproductive or unnecessary participation.

Also, in future NOIs AECA should—as should each intervenor—identify as specifically as it can the issues it intends to address in order to “help all parties to see whether others are planning to address the same issues.” (Intervenor Compensation Program Guide, pages 6-7.) This might include, for example, citing the subset of issues identified in the Scoping Memo which it intends to address.

C.5. Itemized Estimate of Compensation

AECA states that it expects a total estimated budget of \$195,000 itemized as follows:

Person or Item	Hours	Hourly Rate	Cost
Attorney	200	\$250 to 500	\$50,000-100,000
Economic Consultant	300	175	52,500
AECA Executive Director	150	150	22,500
AECA Assistant Director Geis	200	125	25,000
Expenses			15,000
TOTAL			\$165,000-215,000

AECA satisfies the requirement that it include an itemized estimate of the compensation that it expects to request, given the likely duration of the proceeding as it appears at the time the NOI is filed. An hourly rate of \$500 for AECA’s attorney, however, may or may not be reasonable. AECA is encouraged to examine the range of rates generally found reasonable by the Commission for attorneys compensated under the intervenor compensation program. The

reasonableness of each hourly rate should be addressed by AECA's in its subsequent request for compensation, if any.

Moreover, AECA may have an "unrealistic expectation of compensation." (§ 1804(b)(2).) This is based on both (a) the much lower expected budgets of TURN and NRDC and (b) the limited statement of issues and the narrow focus identified in AECA's NOI. The amount of the future award, if any, will be decided by the Commission based on the nature of the contribution made by AECA to the Commission's final decision. It will also be dependent upon the hours spent, reasonableness of those hours, reasonableness of hourly rates and other factors provided in the Public Utilities Code and Commission decision.

C.6. Significant Financial Hardship

A customer's showing of significant financial hardship may be made either in the NOI or in the compensation request submitted after the Commission's final order. (§ 1804(a)(2)(B).) AECA states that it will include its showing as part of its request for compensation.

A significant financial hardship showing for a Category 2 customer is based upon the standard of: "cannot afford, without undue hardship, to pay." (Intervenor Compensation Program Guide, page 5, citing D.98-04-059). A Category 2 customer "must provide the financial information of the customer who authorized you to serve in a representative capacity." (Intervenor Compensation Program Guide, page 5.) AECA must provide the financial information of each individual customer member it represents and make the necessary undue hardship showing for each member. If any member of AECA does not satisfy the undue hardship test, AECA must clearly state the percentage of its membership upon which the undue hardship test is based so that the Commission may properly adjust the 61.6% compensation factor used in

previous awards. Failure to do so may result in delay or denial of a future compensation award.

Finally, AECA states that the eligibility it seeks is “for its individual customer members whose ‘interest is small in comparison to effective participation.’ “ (NOI, page 6,) The comparison test, however, is for Category 3 customers and is not applicable to AECA as a Category 2 customer pursuant to this ruling. AECA should review the Commission’s Intervenor Compensation Program Guide, and may wish to consult with the Commission’s Public Advisor, for more information about customer categories and the tests for significant financial hardship.

(END OF ATTACHMENT C)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on TURN, NRDC and AECA Notices of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated October 21, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.